

(based on the area median income limits established by the Commissioner in February 1987), or if the January 1, 1987 profile is unavailable, a certification from the owner stating its unavailability and a profile as of January 1, 1988, or, if that is also unavailable, a profile as of January 1, 1989;

(6) A transfer of physical assets package, if a transfer is proposed;

(7) A list of any waivers requested by the owner pursuant to § 248.7; and

(8) Any other information that the Commissioner determines is necessary to achieve the purposes of subpart B of this part.

(f) *Revisions.* The owner or owner and purchaser may from time to time revise and amend the plan of action as may be necessary to obtain approval under subpart B of this part and must amend the plan of action no later than 30 days after a change in any of the information required in paragraphs (d) or (e) of this section. The owner shall submit any revision to the Commissioner, and provide a copy of the revision and all documentation supporting the revision except for that documentation deemed "proprietary information" under § 248.101, to the parties, and in the manner, specified in paragraph (c) of this section.

(g) *Failure to Submit.* If the owner fails to submit a plan of action to the Commissioner, when prepayment or termination is sought, within the 6 month period set forth in paragraph (a) of this section or, when a transfer is sought, if the owner and purchaser fail to submit a plan of action within the 6 month time period set forth in paragraph (b) of this section, the notice of intent filed by the owner under § 248.105 shall be ineffective for the purposes of subpart B of this part and the owner shall be barred from submitting another notice of intent under § 248.105 until 6 months after expiration of such period.

(h) *Comment Period for tenants and State or local governments.* Upon submission of the plan of action by the owner, the tenants of the affected project and the State or local government shall have 60 days in which to provide comments on the plan of action to the Commissioner or to the owner, who will then submit the comments to the

Commissioner. The Commissioner shall not approve a plan of action under subpart B of this part before the end of this 60-day period and all comments received during this period will be considered by the Commissioner in making its determination to approve or disapprove a plan of action.

(i) *Notification to tenants and the State or local government of plan of action approval.* Upon the Commissioner's approval of the plan of action, the owner shall notify tenants of the terms thereof by posting in each occupied building a summary of the plan of action and by delivery of a copy of the plan of action to the tenant representative, if any. In addition, the summary must indicate that a copy of the plan of action shall be available for inspection and copying during reasonable hours in a location convenient to the tenants.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 37814, July 13, 1993]

§ 248.141 Criteria for approval of a plan of action involving prepayment and voluntary termination.

(a) *Approval.* The Commissioner may approve a plan of action that provides for the termination of the low income affordability restrictions through prepayment of the mortgage or voluntary termination of the mortgage insurance contract only upon a written finding that—

(1) Implementation of the plan of action will not—

(i) Materially increase economic hardship for current tenants, and will not in any event result in a monthly rental payment by any current tenant that exceeds 30 percent of the monthly adjusted income of the tenant or an increase in the monthly rental payment in any year that exceeds 10 percent (whichever is lower); or in the case of a current tenant who already pays more than such percentage, an increase in the monthly rental payment in any year that exceeds the increase in the Consumer Price Index or 10 percent (whichever is lower); or

(ii) Involuntarily displace current tenants (except for good cause) where comparable and affordable housing is

not readily available, determined without regard to the availability of Federal housing assistance that would address any such hardship or involuntary displacement; and

(2) The supply of vacant, comparable housing is sufficient to ensure that such prepayment will not materially affect—

(i) The availability of decent, safe, and sanitary housing affordable to low income and very low income families or persons in the area that the housing could reasonably be expected to serve;

(ii) The ability of low income and very low income families or persons to find affordable, decent, safe, and sanitary housing near employment opportunities; or

(iii) The housing opportunities of minorities in the community within which the housing is located.

(3) There are no open audit findings, open findings of noncompliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); the Fair Housing Act (42 U.S.C. 3601-3619); Executive Order 11063 (3 CFR 1959-1963 comp., p. 652); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and all regulations promulgated under such statutes and authorities (including, but not limited to 24 CFR part 100), or outstanding violations of the regulatory agreement.

(b) For purposes of approving a plan of action under this section, the Commissioner shall find that the requirements of paragraph (a)(1) of this section have been met if the owner agrees to execute a use agreement which provides that rents for all tenants residing at the project at the time of plan of action approval will not exceed the limit established in paragraph (a)(1)(i) of this section and that no tenant residing in the project at the time of plan of action approval will be involuntarily displaced without good cause.

(c) For purposes of approving a plan of action under this section, the Commissioner shall find that the requirements of paragraph (a)(2) of this section have been met if the project is located in a housing market area which has been determined to have an adequate supply of decent, safe and sanitary rental housing; and it has been de-

termined, based on the specific characteristics of the project, that the prepayment would not materially affect the housing opportunities of low and very-low income families.

(1) For purposes of this section, a "housing market area" is defined as an area where rental housing units of similar characteristics are in relative competition with each other. If a project is in a non-metropolitan area, the housing market area is the county in which the project is located. If the project is located in a metropolitan area the housing market area is the primary metropolitan statistical area (PMSA), or in the case of very large metropolitan areas, the housing market area may be a portion of the PMSA.

(2) For purposes of this section, a housing market area may be determined to have an adequate supply of decent, safe, and sanitary rental housing if the housing market area has a soft rental market. A soft rental market is a housing market area in which the supply of vacant available rental housing significantly exceeds the demand. A soft rental market exists if:

(i) There is currently a surplus of rental housing such that the current excess supply of vacant available housing, plus units currently under construction, is expected to exceed demand for at least the next 24 months; or

(ii) Within the next 12 months, based on the housing production (units currently under construction or with firm planning commitments), in combination with the current supply of available vacant units, supply is expected to exceed demand for at least 24 months.

(3) In order to determine whether the housing market area has a soft rental market, the Commissioner shall consider data from the 1990 Decennial Census and the most recent available local data concerning changes in population, households, employment, the housing inventory, residential construction activity, and the current and anticipated supply/demand conditions within the overall rental market, as well as the occupancy and vacancy situation in assisted housing projects in the area, including information on waiting lists and the experience of voucher holders in finding units.

(4) A determination must also be made on whether the prepayment would materially affect the housing opportunities of low and very-low income families in the area, based on the specific characteristics of the project including unit sizes, the type of tenants, e.g., elderly, handicapped, large families, minorities, the location of the project with respect to its proximity to employment opportunities; and the availability of other assisted housing within the immediate area. The prepayment would be determined to materially affect housing opportunities if:

(i) The project is needed to assist in preserving low income housing in a neighborhood which is being revitalized;

(ii) The project represents a rare source or the only source of low-and moderate-income rental housing in the immediate area;

(iii) There is a shortage of the particular type of rental housing provided by the project such as units suitable for the disabled, single room occupancy, or units for large families;

(iv) The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of low and very-low income families to find housing near employment opportunities; or

(v) The preservation of the housing would be necessary to avoid adversely affecting the housing opportunities of minorities in the community within which the housing is located.

(d) Once the Commissioner has compiled the necessary data and conducted the analysis under paragraph (c) of this section the Commissioner shall issue a written finding to the owner stating whether the plan of action to terminate the low income affordability restrictions is approved or disapproved. The written finding shall contain a specific determination of whether the market area is a soft rental market and prepayment would materially affect housing opportunities. The written finding shall include:

(1) A statement as to whether the owner has agreed to execute a use agreement to protect current tenants, in accordance with paragraph (b) of this section;

(2) A description of the geographic boundaries of the housing market area in which the project is located;

(3) An analysis of current and anticipated supply/demand conditions in both the overall rental market and the assisted housing inventory; and

(4) A discussion of whether the prepayment would materially affect the housing opportunities, given the specific characteristics of the project.

(e) *Disapproval.* If the Commissioner determines a plan of action to prepay a mortgage or terminate an insurance contract fails to meet the requirements of paragraph (a) of this section, the Commissioner shall disapprove the plan and within a reasonable time, shall inform the owner of the reasons for disapproval and suggest alternatives. In the case of disapproval of the plan of action, except for the failure to meet the requirement of paragraph (a)(3) of this section, the notice of intent filed under § 248.105 shall be rendered ineffective for the purposes of this subtitle, and the owner, in order to receive incentives, must file a new notice of intent under such section. If the plan of action is disapproved because of an outstanding civil rights or audit finding, the finding must be closed before the Commissioner will approve a plan of action under this section.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 37815, July 13, 1993; 64 FR 26639, May 14, 1999]

§ 248.145 Criteria for approval of a plan of action involving incentives.

(a) *Approval.* The Commissioner may approve a plan of action for extension of the low income affordability restrictions on an eligible low income housing project or for transfer of the housing to a qualified purchaser, other than a resident council acquiring the project under a resident homeownership plan, only upon a finding that—

(1) Due diligence has been given to ensuring that the package of incentives set forth in the plan of action is, for the Federal Government, the least costly alternative that is consistent with the full achievement of the purposes of this subpart.

(2) The project will be retained as housing affordable for very low, low